

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Larry Godfrey,	:	
	:	
Petitioner	:	Civil Action 2:10-cv-00770
	:	
v.	:	Judge Smith
	:	
Edward Banks, Warden	:	Magistrate Judge Abel
	:	
Respondent	:	

Report and Recommendation

Petitioner Larry Godfrey, a state prisoner, brings this action under 28 U.S.C. §2254 for a petition for writ of habeas corpus. This matter is before the Magistrate Judge for preliminary consideration under Rule 4, Rules Governing Section 2254 Cases in the United States District Courts.

The petition alleges that his 1997 guilty plea convictions for gross sexual imposition and felonious sexual penetration was unconstitutional obtained for the following reasons:

- He was denied a speedy trial;
- He was denied a lawful indictment by grand jury;
- He was subjected to double jeopardy;
- His guilty plea was unlawfully induced without his understanding the nature of the offense and the consequences of his plea;
- He was denied the right to confront his accusers;

- He was denied his privilege against self-incrimination;
- He was denied the effective assistance of counsel;
- He was denied the right to be free from unreasonable search; and
- He was denied due process of law.

However, petitioner previously filed habeas corpus petition petitions. *Godfrey v. Beightler*, 2:01-cv-397-EAS-NMK and *Godfrey v. Warden Noble Correctional Institution*, 2:04-487-GLF_NMK. Both petitions were dismissed; and Godfrey appealed those dismissals to the United States Court of Appeals for the Sixth Circuit, which affirmed. This is a successive habeas corpus petition. Under the provisions of 28 U.S.C. § 2244(b)(3)(A) and (C) a second or successive petition can-not be filed in the district court unless petitioner files an application in the court of appeals and that court issues an order authorizing the filing of the petition.

The Magistrate Judge RECOMMENDS that under the procedures adopted in *In re Jonathan Sims*, 111 F.3d 45, 47 (6th Cir. 1997) this Court TRANSFER this case to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. §1631.

If any party objects to this Report and Recommendation, that party may, within ten (10) days, file and serve on all parties a motion for reconsideration by the Court, specifically designating this Report and Recommendation, and the part thereof in question, as well as the basis for objection thereto. See 28 U.S.C. §636(b)(1)(B); Fed. R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recom-*

mendation will result in a waiver of the right to have the district judge review the *Report and Recommendation de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

s/Mark R. Abel
United States Magistrate Judge